

The Wightman Center for Nursing and Rehabilitation and American Federation of State County and Municipal Employees, District Council 84, AFL-CIO. Case 6-CA-22046

January 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On August 1, 1990, Administrative Law Judge Robert W. Leiner issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the judge's recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, the Wightman Center for Nursing and Rehabilitation, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Dalia E. Belinkoff and *Michael Poprick, Esqs.*, for the General Counsel.

Mark E. Scott, Esq., of Corapolis, Pennsylvania, for the Respondent.

Fred J. Lamberti, Assistant Director, District Council 84, for the Union.

DECISION

STATEMENT OF THE CASE

ROBERT W. LEINER, Administrative Law Judge. This matter was heard in Pittsburgh, Pennsylvania, on January 10, 1990, on the General Counsel's complaint¹ alleging, in substance, that the Wightman Center for Nursing and Rehabilitation (the Respondent), in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act), on or about July 23, 1989, unilaterally increased rates of pay of certain of its unit employees without the agreement of the Union, thereby refusing to abide by an existing collective-bargaining

¹The complaint and notice of hearing are dated September 29, 1989. The underlying unfair labor practice charge, dated August 28, 1989, was filed on August 29, 1989. Respondent's timely answer, dated October 3, 1989, was filed October 5, 1989.

agreement, the changes constituting changes in mandatory subjects of bargaining. Respondent's answer admits various allegations of the complaint, denies others, and denies the commission of any unfair labor practices.

At the hearing, the parties were represented, were given full opportunity to call and examine witnesses, to submit relevant oral and written evidence, and to argue orally on the record. At the close of the hearing, the General Counsel waived final argument; Respondent engaged in final argument; and both General Counsel and Respondent elected to file posthearing briefs which have been carefully considered.

On the entire record, including the briefs, and from my observation of the demeanor of the witnesses as they testified, I make the following

FINDINGS OF FACT

I. RESPONDENT AS STATUTORY EMPLOYER

Based on the jurisdictional allegations of the complaint and testimony received at the hearing, I find that, at all material times, Respondent, a Delaware corporation maintaining an office, place of business, and facility in Pittsburgh, Pennsylvania, has been and is engaged as a health care institution in the operation of a nursing home providing in-patient rehabilitation and medical and professional care services for the elderly. Respondent admits the commerce and jurisdictional allegations of the complaint and admits that it has been and is, at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it is a health care institution within the meaning of Section 2(14) of the Act. I so find.

II. THE UNION AS STATUTORY LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that, at all material times, American Federation of State, County and Municipal Employees, District Council 84, AFL-CIO (the Union) has been and is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

There has been a collective-bargaining relationship between the Union and Respondent for about 20 years. The Union, at all material times, has represented about 85 to 90 of Respondent's employees employed at its Pittsburgh, Pennsylvania nursing home and facility of which about 19 are licensed practical nurses (LPNs). The other employees represented by the Union are nursing assistants, custodial, switchboard and clerical employees, but not registered nurses.

On October 14, 1988, the Union and Respondent entered into their latest collective-bargaining agreement, effective October 1, 1988, through September 30, 1991, covering an appropriate Pittsburgh unit (in which the Union was recognized as the exclusive bargaining agent) of all full-time and regular part-time housekeeping, custodial, nurses aides, switchboard operators, orderlies (male attendant), maintenance employees, licensed practical nurses and unit clerks. The bargaining unit excludes all other employees, guards,

professional employees and supervisors as defined in the Act.²

By virtue of an attached Wage Schedule ("Appendix A"), the agreement establishes wage rates for each of the categories of unit employees. Each wage rate is divided into five levels, level V being the least rate; level I being the highest rate. The wage schedule also provides that the Employer has the discretion to fix the appropriate pay level of new employees hired with substantial experience. The lowest level of pay for an LPN is \$8.10 per hour, the highest is \$9 per hour as of October 1988. In October 1989, the highest pay level I for LPNs rose to \$9.10 per hour; in October 1990, it rose to \$9.20 per hour. The October 1988 level I wage rates for nurses aides is \$6.13 per hour; for unit clerks \$6.38 per hour; for housekeepers \$6.02 per hour; for maintenance helpers \$6.48 per hour; for maintenance specialists \$8.05 per hour; for switchboard, level I, \$6.67 per hour.

Both Federal and State of Pennsylvania authorities regulate Respondent's business: the Federal Government under medicare and medicaid; the State of Pennsylvania pursuant to its regulation of nursing homes. In particular, the Commonwealth of Pennsylvania requires certain ratios of LPNs to beds consistent with the degree of care required in each section of Respondent's facility: the greater the degree of care, the higher the ratio of LPNs required in order to meet health requirements and regulations of the Commonwealth of Pennsylvania.

Certainly no later than the summer of 1988, several months prior to the execution of the present collective-bargaining agreement between the parties, Respondent was experiencing difficulty in obtaining and retaining experienced, qualified LPNs.

Consistent with initial difficulties in the summer of 1988, Respondent notified the Union in July 1988, well prior to the execution of the present agreement, that it desired to implement a bonus system for LPNs. On August 19, 1988, the parties agreed to and implemented an agreement (R. Exh. 1) which, for the period ending 6 weeks later on September 30, 1988 (coextensive with the expiration of the then-existing collective-bargaining agreement), a bonus of \$100 for newly recruited LPNs and a further bonus of \$100 for all newly recruited LPNs who remained for Respondent for 30 days. As above-noted, on October 14, 1988, the parties executed their 1988-1991 collective-bargaining agreement containing the above wage scales (G.C. Exh. 2).

Respondent regarded the LPN level I wage rate of \$9 per hour to be a competitive wage rate when it executed the collective-bargaining agreement in October 1988. It first noticed that the \$9 per hour LPN wage rate became noncompetitive at the end of January or the beginning of February 1989 (Tr. 150-151).³

In the second week of February 1988, Respondent's personnel director (Linda Vargo), finding that the existing 22 or 23 LPNs were insufficient to staff Respondent's facility (the actual starting rates for all LPN applicants was a level I, \$9

per hour), telephoned the Union (Assistant Council Director Fred J. Lamberti) and told him of Respondent's "desperate need" for LPNs and of a desire to use outside agencies to supply LPNs (Tr. 152, 154). In that phone conversation, the Union agreed to Respondent's request and therefore executed an agreement (R. Exh. 2) dated February 14, 1989, which, inter alia, (a) permitted Respondent to hire LPNs from outside sources, provided that unit LPNs were asked to work overtime, and rejected an offer thereof; (b) Respondent would assert every possible effort to recruit LPNs into the unit; and (c) either party could revoke the agreement on 1 week's notice. The recruitment of LPNs from outside sources proved expensive in several ways: the outside agency LPNs were receiving wages at a rate of \$12 to \$13 per hour, whereas unit employees were receiving a maximum of \$9 per hour; Respondent was forced to pay the agency as much as \$25 per hour to receive these services; and the disparity between wages received by agency LPNs and Respondent's unit LPNs caused, as might be expected, considerable dispute and dissension. Respondent's employees threatened to quit over the disparity.

In April 1989, Respondent's administrator (Toni Coury) telephoned the Union (Lamberti) and told him that Respondent wanted to raise the LPN wage rates by \$2 per hour. Lamberti said that he wanted a formal meeting with regard to negotiating the wage raise at which time he would discuss with her, in addition, an extension of the 3-year agreement. Coury answered that she would get back to him after she consulted counsel (Tr. 22). When Coury thereafter told Lamberti that she had consulted counsel but that Respondent was not interested in the proposed contract extension, Lamberti, with Coury's agreement, spoke directly to Respondent's attorney, Mark Scott.

On and after April 24, 1989, the parties met formally and ultimately took the following positions: Respondent, in exchange for the right to increase LPNs' wages by \$2 per hour, would grant a 2-year contract extension, plus 30 cents per hour increases for non-LPNs in each of the 2 years of contract extension (the 4th and 5th years of the contract) plus increases in Respondent's contributions towards the employee health insurance program (R. Br. p. 7). The Union reduced its wage demand to 40 cents per hour in each of the last 2 years for the non-LPNs but would agree to reduce its demand no further (R. Br. p. 7).

On July 19, 1989, Respondent answered the Union's last proposal in writing (G.C. Exh. 3). After reviewing the status of bargaining and the positions of the parties, together with the assertion that the \$2-per-hour increases for LPNs was the "minimum amount required in order for [Respondent] to become competitive in the current labor market for LPNs," Respondent asserted:

Despite earnest good faith bargaining on the part of both Wightman and the Union, the parties have been unable to come to an agreement on these issues and we now clearly are at impasse. Due to the impasse, as well as the absolute economic necessity for Wightman to address its serious problem regarding the retention and attraction of LPNs, please be advised that Wightman intends to raise the wage rates of all its LPNs by the \$2 per hour amount which has been discussed by the parties. This increase will be effective with the pay period

² Respondent's duly filed answer admits the appropriateness of the unit within Sec. 9(a) of the Act.

³ Respondent asserts that the Union, during collective bargaining prior to October 14, 1988 (the date of execution of the current collective-bargaining agreement), was resistant to a larger wage increase for LPNs because of the effect on other unit employees of a large disparity between the wages of LPNs and such other employees.

commencing with the 7:00 A.M. shift on Saturday, July 23, 1989.

A few days after Lamberti received the letter, he spoke with Attorney Scott, accused him of a "cheap shot," denied the existence of impasse, and questioned the unilateral increase in the face of an existing collective-bargaining agreement (Tr. 42). Scott told Lamberti that his client, nevertheless, decided to implement the \$2 per hour wage increase (Tr. 43).

By mid-August, Lamberti, having instructed his attorney to file an unfair labor practice charge, nevertheless again spoke with Scott. He told Scott that his attorney had suggested that the Union retreat from its 40-cent demand to 35 cents per hour and not file the unfair labor practice charge. The Union said it would agree to the \$2-per-hour increase if, in addition, Respondent agreed to pick up the additional health benefits to all employees. Scott said that he would get back to Lamberti but did not do so and Lamberti filed the instant unfair labor practice charge (Tr. 45-47). Thereafter, Lamberti telephoned Scott and suggested that they settle the matter because they were only 5 cents apart (Tr. 47-48). Scott said that he would speak to his client and get back to Lamberti. He did not do so (Tr. 48).

Although Respondent concedes that the Union's last demand was an increase of 40 cents per hour for other unit employees as opposed to Respondent's offer of 30 cents per hour and that the parties were in substantial agreement on the health insurance (Tr. 91), Respondent asserts that Lamberti never offered 35 cents an hour (Tr. 95). Respondent, however, adduces no *testimony* or other evidence to controvert Lamberti's sworn testimony.

Lamberti testified that he discovered that the \$2-per-hour increase was actually implemented in August 1989. Respondent does not deny that the \$2-per-hour increase was implemented.

Discussion and Conclusions

There is no dispute that the Union unilaterally increased the wages of LPNs on or about July 23, 1989, by \$2 per hour. Respondent, in writing, specified that the reasons for the unilateral act were that (1) the parties had bargained in good faith to impasse on the subject; and (2) the Respondent was faced with the "absolute economic necessity" to raise the wage rate in order to be competitive in hiring and retraining LPNs. There is also no question that the Respondent's unilateral act occurred in midterm of a lawful collective-bargaining agreement which specifically addressed the wage rates of LPNs.

An employer's unilateral change of unit employees wage rates during the term of a collective-bargaining agreement amounts to a repudiation of the agreement which is not merely a breach of contract but "amounts, as a practical matter, to the striking of a death blow to the contract as a whole, and is thus, in reality, a basic repudiation of the bargaining relationship." *Oak Cliff-Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), *enfd. mem.* 505 F.2d 1302 (5th Cir. 1974), *cert. denied* 423 U.S. 826 (1975). During the term of the agreement, it is not *impasse* that is the legal requisite to a change of the wage rates, a mandatory subject of bargaining; rather consent is the requirement, *St. Agnes Medical Center*, 287 NLRB 242 (1987). Furthermore, economic

necessity is no excuse or defense to the unlawfulness of the unilateral change *Standard Fittings Co. v. NLRB*, 845 F.2d 1311 (5th Cir. 1988). Respondent's good-faith bargaining, any "impasse," and the desire to save jobs and its business are all irrelevant. *Oak Cliff-Golman Baking*, *supra*.

On the face of Respondent's July 19, 1989 letter (G.C. Exh. 3), the violation of Section 8(a)(5) and (1) of the Act is made out by Respondent's assertion that it had bargained to impasse rather than having gained the Union's consent; and that the motive for such unilateral change in the wage rates of LPNs was based on "economic necessity."

At the trial, and again in its brief, Respondent asserts that it was not "economic necessity" (as it had written to the Union to justify its otherwise unlawful unilateral act); rather it was "operational necessity." By "operational necessity," Respondent asserts that its failure to unilaterally raise the LPNs' wages by \$2 per hour would have caused it to fail to meet the Commonwealth of Pennsylvania's staffing requirements which, in turn, would cause Respondent to close its doors and go out of business. At best, however, "operational necessity" is merely a subterfuge for "economic necessity." What Respondent required was the Union's consent to the change in wage rates established by the collective-bargaining agreement. In short, the Commonwealth of Pennsylvania had no interest in the source of the necessary LPNs. It would not close Respondent down for insufficient staffing of LPNs if Respondent could successfully hire a sufficient number of LPNs. It could hire the LPNs by gaining the Union's consent. It could gain the Union's consent by acceding, in whole or in part, to the Union's wage and other demands. This is just another means of expressing the obvious "economic necessity" basis to Respondent's "operational necessity" argument. Respondent may not mask the "economic necessity," which it already admitted was the basis for its act, by creating at the trial a further category of "operational necessity," meaning the same thing.

Respondent further defends on the ground that Board precedent in terms of the unlawfulness of midterm unilateral changes on wages relates to cases involving employer decisions to *decrease* the wage rates. While it is true that the Board precedents deal mainly with cuts in wage rates, the rule is that any unilateral change in a mandatory subject of bargaining during the term of an existing collective-bargaining agreement violates Section 8(d) and Section 8(a)(5) and (1) of the Act. *Standard Fittings Co. v. NLRB*, 845 F.2d 1311 (5th Cir. 1988). In any event, in *Mack Trucks*, 294 NLRB 864 (1989), the employer, as in the instant case, announced and implemented an *increase* in wage rates because the employer had "a great deal of difficulty obtaining any qualified person who was willing to work for the starting rate fixed by the collective-bargaining agreement." When the labor organization involved therein refused to consent to the change and the employer implemented the new wage rate unilaterally, the Board held that the unilateral change violated Section 8(a)(1) and (5) of the Act. The Board again held that the proffered business justification was essentially irrelevant.

Respondent also argues that the unilateral act should be excused because there is no further or other evidence that Respondent sought to otherwise undermine the Union by virtue of any acts relating to bad-faith bargaining among unit employees. In particular, Respondent notes that it did not ad-

vertise the Union's refusal to approve the increase or try to circumvent the Union by dealing with employees, or by any other acts of bad faith. Respondent's good faith, as above-noted, is entirely irrelevant. *Oak Cliff-Golman*, supra. In *Connecticut Light & Power Co.*, 271 NLRB 766, 767 (1984), in which the Board found no duty to bargain over a proposed wage increase in midterm, it was faced with similar arguments and rejected them. See, in particular, Member Zimmerman's position in *Connecticut Light & Power Co.*, supra at 767 fn. 2.

Respondent defends on the ground that the Union waived its right to object to Respondent's otherwise unlawful act.

At the hearing, Respondent argued that the waiver was derived from the Union's counterproposal to extend the contract for an additional 2 years, its request for increased health benefits. Respondent asserts that counterproposals of such "sweeping nature" take these efforts outside the normal line of Board cases, recognized by Respondent, which hold that counterproposals do not constitute a waiver of the necessity for gaining the Union's consent for otherwise unlawful unilateral changes. The Board rule, as I understand it, is clearly to the contrary. Thus, there is substantial Board and court authority for the contrary position: That a union does not tacitly agree to reopen a contract, thereby incurring a bargaining obligation, simply by agreeing to discuss the employer's proposed midterm wage modifications and offering its own counterproposals. *Standard Fitting Co. v. NLRB*, supra at fn. 3, citing cases including *Herman Bros.*, 273 NLRB 124, 126 (1984), enf'd. mem. 780 F.2d 1015 (3d Cir. 1985).

In its brief, Respondent nowhere adverts to its argument at trial, of a waiver based on the "sweeping nature" of the Union's counterproposals. Rather, in its brief it relies on a waiver derived from the savings clause in the existing collective-bargaining agreement (R. Br. at 20).

By article XIV of the collective-bargaining agreement, section 1, the parties agreed that:

Section 1 should any of the terms and provisions of this Agreement beheld unlawful unenforceable by reason of any federal or state law, . . . or regulation . . . now existing or hereafter enacted or issued. . . .

(b) Upon the request of either party to this Agreement the Union and the Health Center shall enter into negotiations for the sole purpose of arriving at a mutual satisfactory replacement for such terms or provisions.

In order to reach this position, Respondent argues that the word "unenforceable" within the above section 1, means "unperformable" (R. Br. at 21). It further argues that the agreement became "unperformable" and thus "unenforceable" within the meaning of the contract by operation of law because the Commonwealth of Pennsylvania's regulations regarding minimum LPN staffing levels, could not be "performed" without Respondent's necessarily failing to meet the Commonwealth of Pennsylvania's regulations (R. Br. p. 21).

The short answer to this contention is that Respondent's obligations to the Commonwealth of Pennsylvania could have been clearly met by gaining the Union's consent. That consent, a matter of economics, Respondent failed to obtain. Respondent's obligations were clearly "performable" and, in

any case, its agreement with the Union did not become "unenforceable" by operation of the laws of the Commonwealth of Pennsylvania.⁴

CONCLUSIONS OF LAW

1. Respondent The Wightman Center for Nursing and Rehabilitation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and is a health care institution within the meaning of Section 2(14) of the Act.

2. American Federation of State, County and Municipal Employees, District Council 84, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time housekeeping, custodial and maintenance employees, nurses aides, switchboard operators, orderlies, licensed practical nurses and unit clerks employed by Respondent at its Pittsburgh, Pennsylvania facilities; excluding guards, professional employees and supervisors as defined in the Act.

4. At all material times, the Union has been recognized as the designated exclusive collective-bargaining representative of the employees in the above unit by virtue of Section 9(a) of the Act, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. At all material times, Respondent has embodied such recognition in successive collective-bargaining agreements with the Union, the most recent agreement being effective by its terms for the period October 1, 1988, to September 30, 1991, which agreement establishes, inter alia, the rates of pay for employees in the unit, including licensed practical nurses (LPNs).

6. Commencing on or about July 23, 1989, Respondent, having unilaterally increased the rates of pay for all LPNs without the consent of the Union, having thereby refused to abide by the terms of its collective-bargaining agreement with the Union concerning a mandatory subject of bargaining, has refused to bargain collectively and in good faith with the Union and had thus engaged in unfair labor practices in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act.

7. The above unfair labor practices of Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent had violated Section 8(a)(5) and (1) of the Act, I shall recommend to the Board that it cease and desist from continuing in that action and to take

⁴While I am not substituting my business judgment for Respondent's, the separation of the parties on an economic basis was, according to Respondent, 10 cents per hour for unit employees other than LPNs; and, according to the Union, 5 cents an hour. Under these conditions, it appears to me difficult for Respondent to argue, under the facts of this case (including the bargaining between the parties), that the Union's failure to give consent made the contract "unenforceable" because of Respondent's obligation to the Commonwealth of Pennsylvania.

certain affirmative action designed to effectuate the policies of the Act. Thus, I shall recommend to the Board that Respondent be required to revoke the unilateral wage increase to the LPNs if the Union, as the exclusive collective-bargaining representative, so requests. *Mack Trucks*, 294 NLRB 864 (1989).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, The Wightman Center For Nursing and Rehabilitation, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively in good faith with American Federation of State, County and Municipal Employees, District Council 84, AFL-CIO, as the exclusive representative of its employees in the following appropriate bargaining unit by failing to gain consent of the Union to any change during the terms of a collective-bargaining agreement in any mandatory subject of bargaining embodied in the collective-bargaining agreement between the parties affecting unit employees prior to making any change in such mandatory subject:

All full-time and part-time housekeeping, custodial and maintenance employees, nurses aides, switchboard operators, orderlies, licensed practical nurses and unit clerks employed by Respondent at its Pittsburgh, Pennsylvania facilities; excluding guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request by the Union, rescind the unilateral increases in wage rates to its LPNs at its Pittsburgh, Pennsylvania facility.

(b) Post at its facility in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."⁶ Copies of the

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with American Federation of State, County and Municipal Employees, District Council 84, AFL-CIO, by unilaterally granting wage increases to any unit employees during the term of any collective-bargaining agreement between the Union and the Health Center without the consent of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, on request of the Union, rescind the wage increase for LPNs we unlawfully and unilaterally implemented for LPNs during the term of our collective-bargaining agreement with the Union. The appropriate unit for bargaining is:

All full-time and part-time housekeeping, custodial and maintenance employees, nurses aides, switchboard operators, orderlies, licensed practical nurses and unit clerks employed at our Pittsburgh, Pennsylvania, facility; excluding guards, professional employees and supervisors as defined in the Act.

THE WIGHTMAN CENTER FOR NURSING AND REHABILITATION